



U.S. Citizenship
and Immigration
Services

FILE:

Office: TEXAS SERVICE CENTER

Date:

OCT 26 2004

IN RE:

Applicant:

APPLICATION:

Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT:

Self-represented

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Cindy M. Gomez for

Robert P. Wiemann, Director
Administrative Appeals Office

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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DISCUSSION: The application was denied by the Director, Texas Service Center on February 12, 2003. The applicant filed a motion to reopen that was dismissed by the service center director on April 30, 2003. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected, and the prior decision of the director is affirmed.

The applicant is a native and citizen of El Salvador who is seeking Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254.

The director's decision stated that the applicant had been requested to submit photo identification and evidence establishing that she was eligible for late registration, but failed to respond to all of the requested information. The director also noted that a review of Immigration and Naturalization Service (INS), now Citizenship and Immigration Services (CIS), records did not reflect that the applicant had a pending application for adjustment of status during the initial registration period. Because the applicant failed to provide all of the requested evidence, the director determined that she had abandoned her application and denied the application on February 12, 2003. The director advised the applicant that there was no appeal to this decision, and that the decision was without prejudice to consideration of subsequent applications filed with CIS.

The applicant filed a motion to reopen, in which she stated that she went to the INS office in Houston, Texas, and was told she had until November 12, 2002, to apply for TPS. She stated that during the initial registration period, she was pregnant and had no money. She stated that she "gave birth at the end of 2001 and [she] couldn't apply on time." She indicated that she learned of a second chance to register until November 12, 2002, during which time she applied. It is noted that according to the State of Texas Birth Certificates submitted by the applicant, her children were born in Texas on October 21, 1995, June 16, 1998, and February 9, 2001.

The director addressed the applicant's motion to reopen, finding that the applicant had failed to establish that she was eligible for late registration pursuant to the provisions of 8 C.F.R. § 244.2(f)(2). The director also noted the requirements of a motion to reopen, pursuant to 8 C.F.R. § 103.5(a)(2), and determined that the applicant had failed to establish her eligibility for TPS and that her application would remain denied.

The applicant submits an appeal to the director's decision dismissing her motion to reopen and denying her TPS application. The applicant states that the denial of her TPS case is arbitrary and capricious, and states that her residency and work were proven with affidavits, receipts, her daughter's birth certificate, and other documents. The applicant asserts that a different standard was applied in violation of her due process and equal protection rights. The applicant indicates on the Form I-290B, Notice of Appeal, that she is submitting a separate brief and/or evidence with the appeal. The record, however, does not include additional evidence, a brief, or any other documentation submitted with the appeal. Therefore, the record shall be considered complete.

An appeal that is not filed within the time allowed must be rejected as improperly filed. In such a case, any filing fee accepted will not be refunded. 8 C.F.R. § 103.3(a)(2)(v)(B)(1).

Whenever a person has the right or is required to do some act within a prescribed period after the service of a notice upon him and the notice is served by mail, three days shall be added to the prescribed period. Service by mail is complete upon mailing. 8 C.F.R. § 103.5a(b).

The director's decision on the motion to reopen did not advise the applicant of a timeframe in which any appeal must be properly filed. Pursuant to the regulation at 8 C.F.R. § 103.3(a)(2)(i), an appeal must be filed within

thirty days after service of the decision. Coupled with three days for mailing, the appeal, in this case, should have been filed on or before June 2, 2003. The appeal was received at the Texas Service Center on August 28, 2003.

It is noted that the explanation offered by the applicant and the evidence contained in the record do not overcome the findings of the director. The initial registration period for El Salvadorans was from March 9, 2001, through September 9, 2002. The record reveals that the applicant filed her initial TPS application with the INS on November 15, 2002. The applicant states that she was informed that she could apply for TPS until the date of November 12, 2002. However, as specified in the *Federal Register*, July 11, 2002, (Vol. 67, Number 133), the period of September 9, 2002 through November 12, 2002, was a re-registration period, not the initial registration period. The information provided in the *Federal Register* clearly indicated that this period was an extension of the TPS designation and did not change the required dates of continuous residence or continuous physical presence. The article further specified that: "[the extension] does not expand TPS availability to those who are not already TPS class members." The applicant did not submit any evidence to establish that she was eligible for late registration in accordance with the regulations at 8 C.F.R. § 244.2(f)(2).

Based upon the applicant's failure to file a timely appeal, the appeal will be rejected.

As always in these proceedings, the burden of proof rests solely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The appeal is rejected, and the prior decisions of the director are affirmed.